IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On-Briefs to the Western Section of the Court of Appeals on March 30,2007

MICHAEL WALDRON v. TENNESSEE DEPARTMENT OF CORRECTION

A Direct Appeal from the Chancery Court for Davidson County
No. 05-2027-IV The Honorable Richard Dinkins, Chancellor

No. M2005-02845-COA-R3-CV - Filed on May 3, 2007

Appellant challenges trial court's order granting summary judgment in favor of the Appellee and denying Appellant's petition for declaratory relief. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Michael Waldron, Pro Se

Robert E. Cooper, Attorney General and Reporter; Michael E. Moore, Solicitor General; Bradley W. Flippin, Assistant Attorney General for Appellee, Tennessee Department of Correction

OPINION

I. Factual and Procedural History

In 1998, the Appellant, Michael Waldron ("Mr. Waldron," "Appellant," "Petitioner"), pled guilty to two counts of rape of a child pursuant to T.C.A. § 39-13-522 and was sentenced to fifteen years on each count to be served concurrently in the custody of the Tennessee Department of Correction ("TDOC", "Respondent," "Appellee"). On August 9, 2005, Mr. Waldron filed a petition for declaratory judgment alleging that the TDOC had modified his original sentence. Mr. Waldron claimed that his original sentence was two fifteen year sentences at 85 percent to be served concurrently and that the TDOC had changed the sentence to reflect a sentence of fifteen years at 100 percent.

Mr. Waldron argued that T.C.A. §§ 40-35-501 and 39-13-523, which make it mandatory for a child rapist to serve 100 percent of the sentence undiminished by any sentence credits, were not

yet enacted by the Legislature at the time that he raped a child. Therefore, Mr. Waldron argued that the 100 percent requirement was being applied to him as an *ex post facto* violation.

On October 24, 2005, TDOC filed a Motion for Summary Judgment in response to Mr. Waldron's petition. TDOC argued that Mr. Waldron was ordered by the court to serve 100 percent of his sentence at the time he was sentenced, in accordance with Tennessee law that was in effect at that time.

On November 25, 2005, the trial court granted TDOC's Motion for Summary Judgment and dismissed the case. In its Memorandum Opinion, the trial court stated in pertinent part:

* * * *

> Despite Mr. Waldron's allegation that Tenn. Code Ann. § 39-13-523 became effective on September 10, 1997, the statute actually took effect on July 1, 1992. *See State v. Gibson*, 973 S.W.2d 231, 246 (Tenn. Crim. App. 1997). As the statute was in effect not only at the time Mr. Waldron was sentenced, but also at the time he committed his offenses, the application of Tenn. Code Ann. § 39-13-523 to Mr. Waldron was not an ex post facto violation. Further, Mr. Waldron clearly meets the definition of "child rapist" as defined in Tenn. Code Ann. § 39-13-523(a)(1). He pled guilty and was convicted on two counts of Rape of a Child, a violation of Tenn. Code Ann. § 39-13-522, which convictions are evidenced in the two judgments entered by the sentencing court on March 4, 1998. Lastly, the judgments entered on March 4, 1998 do not reflect mitigated sentences of 85%. Thus, the TDOC did not illegally alter the judgment of the sentencing court.
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> For the reasons articulated above, the Court finds no occurrence of an ex post facto violation. The Court further finds that Mr. Waldron is properly classified as a child rapist, whose sentence must be served at 100% as mandated by statute, and that the TDOC did not illegally alter the judgment entered by the Davidson County Criminal Court. Thus, the Court finds in favor of Respondent. This case is hereby DISMISSED.
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Mr. Waldron filed a Notice of Appeal on December 8, 2005. Mr. Waldron presents one issue for review:

1. Did the Trial Court (Davidson County Chancery Court) err in Dismissing the Appellant's Petition for Declaratory Judgment?

II. Analysis

A motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. ***See*** Tenn. R. Civ. P. 56.04. The moving party for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. ***See Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn. 1997). On a motion for summary judgment, the court must take the strongest legitimate view of evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. ***See id.*** In ***Byrd v. Hall***, 847 S.W.2d 208 (Tenn. 1993), our Supreme Court stated:

> Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery material, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth *specific facts* showing that there is a genuine issue of material fact for trial.

Id. at 210-11 (citations omitted) (emphasis in original).

Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. ***See Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn. 1995). Because only questions of law are involved, there is no presumption of correctness regarding a trial court's grant or denial of summary judgment. ***See Bain***, 926 S.W.2d at 622. Therefore, our review of the trial court's grant of summary judgment is *de novo* on the record before this Court. ***See Warren v. Estate of Kirk***, 954 S.W.2d 722, 723 (Tenn. 1997).

Mr. Waldron states that in 1998, he was charged and convicted on two counts of Rape of a Child for criminal acts that he committed in 1996. Mr. Waldron alleges that he entered into a plea bargain agreement in which he alleges that he received a sentence of fifteen years at 85% on Count 1 and fifteen years at 85% on Count 2, with the sentences to be served concurrently. Mr. Waldron argues that at the time he committed the offenses, T.C.A. § 39-13-523, mandating that a child rapist must serve 100% of his sentence, had not yet been enacted by the Legislature. Therefore, Mr. Waldron argues that TDOC applied T.C.A. § 39-13-523 to him and that therefore TDOC had committed an ex post facto violation. Alternatively, Mr. Waldron alleges that if T.C.A. § 39-13-523 does apply to him, that he does not meet the definition of a "child rapist" as defined in that statute.

The record in this case contains a copy of the judgments entered by the Criminal Court of Davidson County on March 4, 1998. For each Count, Mr. Waldron pled guilty to the offense of

Rape of a Child, pursuant to T.C.A. § 39-13-522. Mr. Waldron was sentenced to 15 years imprisonment for each count, with the sentences to be served concurrently. Neither judgment reflects that the trial court ordered either sentence to be served at 85%. Therefore, Mr. Waldron's argument that he was originally sentenced to serve 85% of his sentence and that TDOC illegally extended the sentence to 100% is without merit.

Further, Mr. Waldron's argument that TDOC committed an ex post facto violation is also without merit. An ex post facto law is one that "retroactively alter[s] the definition of crimes or increase[s] the punishment for criminal acts." *See* ***Kaylor v. Bradley***, 912 S.W.2d 728, 732 (Tenn. Crim. App. 1995). In order to establish an ex post facto violation, a petitioner must establish: (1) the law must apply retrospectively to events occurring before its enactment; and (2) it must disadvantage the offender affected by it. ***Cavitt v. Tennessee Dep't of Corrs.***, No. 01A01-9712-CH-00713, 1999 WL 236277, at *2 (Tenn. Ct. App. Apr. 23, 1999).

T.C.A. § 39-13-522 took effect on July 1, 1992. *See* ***Neely v. Bell***, M2004-01012-CCA-R3-HC, 2005 WL 119558, at *3 (Tenn. Crim. App. Jan. 20, 2005). This statute was in full effect at the time Mr. Waldron committed the offenses (1996) as well as the time that Mr. Waldron was convicted of the offenses (1998). Therefore, Mr. Waldron's argument that an ex post facto violation has occurred is also without merit.

Finally, Mr. Waldron argues that he does not meet the definition of a child rapist pursuant to T.C.A. § 39-13-523(a)(1), which defines "child rapist" as "a person convicted one (1) or more times of rape of a child as defined by § 39-13-522." T.C.A. § 39-13-523(a)(1). Clearly, Mr. Waldron's guilty plea of two counts of rape of a child meets this definition.

We find nothing in the record to reflect that any genuine issues of material fact remain in this case, nor do we find any evidence to reflect that TDOC should not be granted judgment as a matter of law. Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. ***See Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn. 1995). We find this to be such a case. Therefore, we hold that the trial court was correct in granting summary judgment in favor of TDOC.

III. Conclusion

For the foregoing reasons, we affirm the order of the trial court. Costs of this appeal are assessed against the Appellant, Michael Waldron.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.